



Billing Code: 4510-7B

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Administration and Management

2 CFR Part 2998

29 CFR Parts 95 and 98

RIN: 1291-AA38

Department of Labor Implementation of OMB Guidance on Nonprocurement Debarment and Suspension

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AGENCY: Office of the Assistant Secretary for Administration and Management, Department of Labor

ACTION: Direct final rule.

SUMMARY: The U.S. Department of Labor (DOL) is removing its regulations implementing the government-wide common rule on nonprocurement debarment and suspension, currently located in Part 98 of Title 29 of the Code of Federal Regulations (CFR), and adopting the Office of Management and Budget's (OMB) guidance at Title 2 of the CFR. This regulatory action implements the OMB's initiative to streamline and consolidate into one title of the CFR all Federal regulations on nonprocurement debarment and suspension. These changes constitute an administrative simplification that would make no substantive change in DOL policy or procedures for nonprocurement debarment and suspension.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further action. Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] on any unintended changes this action makes in DOL policies and procedures for debarment and

suspension. If an adverse comment about unintended changes is received, DOL will publish a timely withdrawal of the rule in the Federal Register.

ADDRESSES: Comments may be submitted in two ways. All e-mail comments regarding this rule should be sent to Ms. Duyen Tran Ritchie at [Ritchie.duyen.t@dol.gov](mailto:Ritchie.duyen.t@dol.gov). To ensure proper handling, please reference the RIN number in the subject line on your electronic correspondence. Alternatively, comments may be submitted electronically at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Duyen Tran Ritchie, Office of Chief Procurement Officer, (202) 693-7277 [Note: This is not a toll-free telephone number]; or by e-mail at [Ritchie.duyen.t@dol.gov](mailto:Ritchie.duyen.t@dol.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. BACKGROUND

On November 26, 2003, at 68 FR 66534, DOL adopted the government-wide nonprocurement debarment and suspension common rule, which recast the nonprocurement debarment and suspension regulations in plain English and made other required updates.

Thereafter, on May 11, 2004, at 69 FR 26276, OMB established Title 2 of the CFR as the new central location for OMB guidance and agency implementing regulations concerning grants and agreements. This approach benefits the public by making it easier for the affected public to identify an agency's additions and clarifications to the Government-wide policies and procedures. In that action, OMB announced its intention to replace the common rules with OMB guidance that agencies could adopt. OMB began that process by proposing on August 31, 2005, at 70 FR 51863, an interim final guidance on non-procurement debarment and suspension. That guidance requires each agency to issue a brief rule that: (1) adopts the guidance, giving it regulatory effect for that agency's activities; and (2) states any agency-specific additions or

clarifications to the government-wide policies and procedures. The notice stated that the substantive content of the guidance was intended to conform with the substance of the Federal agencies' most recent update in 2003 to the common rule. The guidance was finalized on November 15, 2006, at 71 FR 66431. The proposed regulatory actions will bring the Department into compliance with OMB's 2006 guidance.

## II. THE CURRENT REGULATORY ACTIONS

Pursuant to requirements in OMB's guidance, DOL is taking three actions. First, DOL is adding a new part to its existing Chapter XXIX under Title 2 of the CFR Subtitle B, which is a brief adoption of the OMB guidance and states DOL-specific additions and clarifications. Second, DOL is removing 29 CFR Part 98, the part containing the common rule on nonprocurement debarment and suspension that the OMB guidance supersedes. Third, DOL is making technical corrections to provisions within 29 CFR 95 to replace references to the earlier common rule.

## III. PUBLIC PARTICIPATION

Taken together, these regulatory actions are solely an administrative simplification and are not intended to make any substantive change in policies or procedures. In soliciting comments on these actions, we therefore are not seeking to revisit substantive issues that were resolved during the development of the final common rule in 2003. We are inviting comments specifically on any unintended changes in substantive content that the new part in 2 CFR would make relative to the common rule at 29 CFR Part 98.

Please submit comments by only one method. Receipt of comments will not be acknowledged; however, the Department will post all comments received on <http://www.regulations.gov> without making any change to the comments, including any personal information provided.

The <http://www.regulations.gov> website is the Federal e-rulemaking portal, and all comments posted there are available and accessible to the public.

The Department cautions commenters not to include personal information, such as Social Security Numbers, personal addresses, telephone numbers and email addresses, in comments, as such submitted information will become viewable by the public via <http://www.regulations.gov>.

It is the responsibility of the commenter to safeguard personal information. Comments submitted through <http://www.regulations.gov> will not include the commenter's email address unless the commenter chooses to include that information as a part of a comment.

#### IV. REGULATORY REVIEW

##### A. Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553), agencies generally propose a regulation and offer interested parties the opportunity to comment before it becomes effective. However, as described in the “Background” section of this preamble, the policies and procedures in this regulation have been proposed for comment two times—one time by Federal agencies as a common rule in 2003 and a second time by OMB as guidance in 2006—and adopted each time after resolution of the comments received.

This direct final rule is solely an administrative simplification that would make no substantive change in DOL’s policy or procedures for debarment and suspension. We therefore believe that the rule is noncontroversial and do not expect to receive adverse comments, although we are inviting comments on any unintended substantive change this rule makes.

Accordingly, we find that the solicitation of public comments on this direct final rule is unnecessary and that “good cause” exists under 5 U.S.C. 553(b)(B) and 553(d) to make this rule effective immediately without further action. However, we are affording the public an

opportunity to comment, in the unlikely scenario where unintended consequences are identified. If an adverse comment is received, then the rule will be revoked so that such comments can be considered fully.

B. Executive Order 12866

OMB has determined this rule to be not significant for purposes of E.O. 12866.

C. Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This proposed regulatory action will not have a significant adverse impact on a substantial number of small entities.

D. Unfunded Mandates Act of 1995 (Sec. 202 Pub. L. 104-4)

This proposed regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of \$100 million or more in any one year.

E. Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

F. Federalism (Executive Order 13132)

This proposed regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

G. Impact on Indian Tribes (Executive Order 13175)

This proposed regulatory action does not have tribal implications under Executive Order 13175 that would require a tribal summary impact statement. The proposed rule would not have

substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

H. Interference with Protected Property Rights (Executive Order 12630)

The proposed regulatory action is not subject to Executive Order 12630 because it does not involve implementation of a policy that has takings implications or that could impose limitations on private property use.

List of Subjects

2 CFR Part 2998

Administrative practice and procedure, Debarment and suspension, Government procurement, Grant programs; Grants administration, Reporting and recordkeeping requirements

29 CFR Part 95

Foreign Governments, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and with Commercial Organizations, Organizations Under the Jurisdiction of Foreign Governments, and International Organizations

29 CFR Part 98

Governmentwide Debarment and Suspension (Nonprocurement)

Dated: April 22, 2016.

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T. MICHAEL KERR

Assistant Secretary for

Administration and Management

Accordingly, for the reasons set forth in the preamble, and under the authority of 5 U.S.C. 301; E.O. 12549 (3 CFR, 1986 Comp. p.189); E.O. 12689 (3 CFR, 1989 Comp. p.235); sec 2455 Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note), the United States Department of Labor amends the Code of Federal Regulations, Title 2, Subtitle B, and Parts 95 and 98 of Subtitle B of Title 29, as follows:

## **Title 2—Grants and Agreements**

### **CHAPTER XXIX —DEPARTMENT OF LABOR**

1. Add part 2998 to chapter XXIX of subtitle B to read as follows:

#### **PART 2998—NONPROCUREMENT DEBARMENT AND SUSPENSION**

Sec.

2998.10 What does this part do?

2998.20 Does this part apply to me?

2998.30 What policies and procedures must I follow?

##### **Subpart A—General**

2998.137 Who in the DOL may grant an exception to let an excluded person participate in a covered transaction?

##### **Subpart B—Covered Transactions**

2998.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

##### **Subpart C—Responsibilities of Participants Regarding Transactions**

2998.332 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

##### **Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions**

2998.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E through J—[Reserved]

Authority: 5 U.S.C. 301; E.O. 12549 (3 CFR, 1986 Comp., p.189); E.O. 12689 (3 CFR, 1989 Comp., p.235); sec 2455 Pub. L. 103-355, 108 Stat. 3327 (31 U.S.C. 6101 note).

**§ 2998.10 What does this part do?**

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Department of Labor (DOL) policies and procedures for non-procurement debarment and suspension. It thereby gives regulatory effect for DOL to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189); Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235); and section 2455 of the Federal Acquisition Streamlining Act of 1994, 103 (31 U.S.C. 6101 note).

**§ 2998.20 Does this part apply to me?**

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

- (a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “non-procurement transaction” at 2 CFR 180.970);
- (b) Respondent in a Department of Labor suspension or debarment action;
- (c) Department of Labor debarment or suspension official; or
- (d) Department of Labor grants officer, agreements officer, or other official authorized to enter into any type of non-procurement transaction that is a covered transaction.

**§ 2998.30 What policies and procedures must I follow?**

- (a) The Department of Labor’s policies and procedures that you must follow are specified in:
  - (1) Each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180; and



(2) The supplement to each section of the OMB guidance that is found in this part under the same section number. (The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., Sec. 2998.220)).

(b) For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, the Department of Labor's policies and procedures are those in the OMB guidance.

### **Subpart A—General**

#### **§ 9808.137 Who in DOL may grant an exception to let an excluded person participate in a covered transaction?**

Within the Department of Labor, the Secretary of Labor or designee has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135. If any designated official grants an exception, the exception must be in writing and state the reason(s) for deviating from the government-wide policy in Executive Order 12549.

### **Subpart B—Covered Transactions**

#### **§ 2998.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?**

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Labor under a covered non-procurement transaction. This extends the coverage of the Department of Labor non-procurement suspension and debarment

requirements to all lower tiers of subcontracts under covered non-procurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower tier coverage in the figure in the appendix to 2 CFR part 180).

### **Subpart C—Responsibilities of Participants Regarding Transactions**

#### **§ 2998.332 What requirements must I pass down to persons at lower tiers with whom I intend to do business?**

You, as a participant, must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

### **Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions**

#### **§ 2998.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?**

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with Subpart C of 2 CFR part 180, and supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

### **Subparts E through J—[Reserved]**

## **Title 29—Labor**

### **PART 95—[AMENDED]**

2. The authority citation for part 95 continues to read as follows:

Authority: 5 U.S.C. 301; OMB Circular A-110, as amended, as codified at 2 CFR part 215.

#### **§ 95.2 [Amended]**

3. Section 95.2 is amended in paragraph (mm) by revising the first citation “29 CFR part 98” to read “2 CFR part 2998” and revising the second citation “29 CFR part 98, subpart D” to read “29 CFR part 98”.

**§ 95.13 [Amended]**

4. Section 95.13 is amended by revising the citation “29 CFR part 98” to read “2 CFR part 2998”.

**§ 95.44 [Amended]**

5. Section 95.44 is amended in paragraph (d) by revising the citation “29 CFR part 98” to read “2 CFR part 2998”.

**§ 95.62 [Amended]**

6. Section 95.62 is amended in paragraph (d) by revising the citation “29 CFR part 98” to read “2 CFR part 2998”.

**Appendix A to Part 95 [Amended]**

7. Appendix A to part 95 is amended in paragraph 7 by revising the citation “29 CFR part 98” to read “2 CFR part 2998”.

**PART 98— [REMOVED]**

8. Remove part 98.